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1 Here, on at least three occasions, the Court has dismissed civil actions commenced by
2 Plaintiff while in detention as frivolous or for failure to state a claim upon which any relief may be
3 granted. *See Braunstein v. Sandoval et al.*, 3:12-cv-00235-LRH-WGC; *Braunstein v. Villani et al.*,
4 3:12-cv-00665-MMD-VPC; and *Braunstein v. Clark County et al.*, 3:02-cv-00163-DWH-RAM (all
5 dismissed for failure to state a claim). In fact, the Court has already determined that Plaintiff is
6 barred from proceeding *in forma pauperis* in civil actions while incarcerated, based on 28 U.S.C. §
7 1915(g). *See Braunstein v. Feil, et al.*, 2:16-cv-02062-APG-GWF. The Court takes judicial notice of
8 its prior decisions in the above matters.

9 Plaintiff's instant case is a claim brought under 42 U.S.C. § 1983 for alleged deprivation of
10 civil rights stemming from his conviction in a Nevada state court in January of 2000. Plaintiff does
11 not allege or provide any evidence to suggest that he was in imminent danger of serious physical
12 injury at the time he submitted his complaint. As such, Plaintiff must pre-pay the \$400 filing fee in
13 full before this action may commence. *See Andrews v. Cervantes*, 493 F.3d 1047, 1055-56 (9th Cir.
14 2007) (holding that the exception to § 1915(g) applies only if the complaint makes a plausible
15 allegation that the prisoner faced an ongoing danger of serious physical injury at the time of filing).

16 **II. Plaintiff's Motion for Appointment of Counsel**

17 Plaintiff requests appointment of counsel to assist in litigation of his current case. However,
18 civil litigants do not have a Sixth Amendment right to appointed counsel. *Storseth v. Spellman*, 654
19 F.2d 1349, 1353 (9th Cir. 1981). In very limited circumstances, federal courts are empowered to
20 request an attorney to represent an indigent civil litigant. For example, courts have discretion,
21 pursuant to 28 U.S.C. § 1915(e)(1), to "request" that an attorney represent indigent civil litigants
22 upon a showing of "exceptional circumstances." *Ageyman v. Corrections Corp. of America*, 390
23 F.3d 1101, 1103 (9th Cir. 2004). The circumstances in which a court will make such a request,
24 however, are exceedingly rare and require a finding of extraordinary circumstances. *United States v.*
25 *30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986). The difficulties inherent in proceeding
26 pro se do not qualify as exceptional circumstances. *Housewright*, 900 F.2d 1332, 1335-1336 (9th
27 Cir. 1990).

28 To determine whether the "exceptional circumstances" necessary for appointment of counsel

1 are present, courts evaluate (1) the likelihood of plaintiff's success on the merits and (2) the
2 plaintiff's ability to articulate his claim *pro se* "in light of the complexity of the legal issues
3 involved." *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
4 Cir. 1986)). Neither of these factors is dispositive and both must be viewed together. *Wilborn*, 789
5 F.2d at 1331.

6 Here, the Court does not find any exceptional circumstances. Plaintiff makes a civil rights
7 complaint under 42 U.S.C. § 1983. However, upon review of Plaintiff's complaint and supporting
8 documents, Plaintiff's case is unlikely to succeed on the merits, as it appears to be a successive
9 attempt to bring a claim regarding his conviction in a Nevada state court in January, 2000 (*See e.g.*,
10 *Braunstein v. Sandoval et al.*, 3:12-cv-00235-LRH-WGC; *Braunstein v. Villani et al.*,
11 3:12-cv-00665-MMD-VPC). Moreover, Plaintiff's claims, that employees of the state of Nevada
12 violated his civil rights by carrying out his trial and subsequent conviction, are not inherently
13 complex. Plaintiff has repeatedly litigated this and other similar claims, and has been able to
14 articulate his argument with reasonable clarity.

15 Any pro se litigant "would be better served with the assistance of counsel." *Rand v. Rowland*,
16 113 F.3d 1520, 1525 (9th Cir. 1997) (citing *Wilborn*, 789 F.2d at 1331). However, when a pro se
17 litigant is able to "articulate his claims against the relative complexity of the matter," but unable to
18 show a likelihood of success on the merits, the "exceptional circumstances" which might require the
19 appointment of counsel do not exist. *Id.* The Court will therefore deny the motion for counsel.

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1 IT IS THEREFORE ORDERED that Plaintiff's application to proceed *in forma pauperis*
2 (ECF No. 1) is DENIED.

3 IT IS FURTHER ORDERED that Plaintiff's motion for appointment of counsel (ECF No. 2)
4 is DENIED.

5 IT IS FURTHER ORDERED that within thirty days from the date of this order, Plaintiff must
6 pay the full \$400 fee for a civil action (which includes the \$350 filing fee and the \$50 administrative
7 fee). Plaintiff is advised that failure to comply with this order will result in a recommendation that
8 his case be dismissed.

9 DATED: August 1, 2017

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12 C.W. Hoffman, Jr.
13 United States Magistrate Judge
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